



PATENT  
Attorney Docket No. 209391/B&S

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

48

In re Application of:

LEIDNER et al.

Art Unit: 1714

Application No.: 09/828,219

Examiner: C. Shosho

Filed: April 9, 2001

For: ERASABLE COLORED PENCIL  
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**TERMINAL DISCLAIMER UNDER 37 CFR § 1.321(b)**

Petitioner, Binney & Smith Inc., is the owner of 100 percent interest in the above-identified application (hereinafter "the present application").

Pursuant to 37 C.F.R. § 3.73(b), the assignments of the present application from the inventors, or chain of title from the inventors, to the Petitioner were recorded in the Patent and Trademark Office at Reel 010181, Frame 0538; and Reel 010181, Frame 0461, both on August 20, 1999.

Also, pursuant to 37 C.F.R. § 3.73(b), the undersigned has reviewed all the evidentiary documents accompanying or referred to in this Terminal Disclaimer and, to the best of the undersigned's knowledge and belief, certifies that title is in the Petitioner.

Petitioner, through its attorneys, hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the present application that would extend beyond the expiration date of the full statutory term defined in 35 U.S.C. § 154 to § 156 and § 173 of U.S. Patent 6,271,286 (hereinafter "the prior patent"), as shortened by any terminal disclaimer filed prior to the grant of the prior patent.

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Petitioner, through its attorneys, further agrees that any patent granted on the present application shall be enforceable only for and during such period that its legal title is the same as the legal title to the prior patent, this agreement to run with any patent granted on the present application and to be binding upon the grantee, its successors, and assigns.

In making the above disclaimer, Petitioner does not disclaim the terminal part of any patent granted on the present application that would extend to the expiration date of the full statutory term of the prior patent as defined in 35 U.S.C. § 154 to § 156 and § 173 in the event the prior patent terminates prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer filed prior to the grant of the patent. Examples of such non-applicable termination of the prior patent are as follows: (1) the prior patent expires for failure to pay a maintenance fee, (2) the prior patent is held unenforceable, (3) the prior patent is found invalid by a court of competent jurisdiction, (4) the prior patent is statutorily disclaimed in whole or terminally disclaimed under 37 C.F.R. § 1.321, (5) the prior patent has all claims canceled by a reexamination certificate or reissuance, and (6) the prior patent is in any manner terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer.

In making this disclaimer, Petitioner reserves the right to extend the term of any patent granted on the present application for a period of delay, in the event the delay is defined by statute and/or regulation as allowing, or providing for, an extension of term. This right is reserved in the event the prior patent terminates, or does not terminate, prior to the expiration of its full statutory term. Examples of such a delay include regulatory delay, and delay due to appellate review.

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The undersigned is empowered to act on behalf of the Petitioner.

The fee of \$110.00 required by 37 C.F.R. § 1.20(d) is attached.

Respectfully submitted,

LEYDIG, VOIT & MAYER



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